

**7. CASE-LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION**

- 7.1 Origin: Commission**  
**References: Articles 2(1), 9 and 11**  
**Subject: CJEU Case C-7/13 *Skandia America*: VAT grouping – the point of view of the VAT Expert Group**  
**(Document taxud.c.1(2015)4389038 – Working paper No 879)**

with account also taken of discussions during the 103<sup>rd</sup> meeting:

- 3.1 Origin: Commission**  
**References: Articles 2(1), 9 and 11**  
**Subject: CJEU Case C-7/13 *Skandia America*: VAT group**  
**(Document taxud.c.1(2015)747072 – Working paper No 845)**

1. The VAT Committee by **a large majority** agrees that in case of a legal person comprising a main establishment (hereinafter “head office”) and a fixed establishment (hereinafter “branch”) within different territories, only the entity (head office or branch) physically present in the territory of a Member State that has introduced the VAT grouping scheme may be considered to be “established in the territory of that Member State” for the purposes of Article 11 of the VAT Directive, and thus able to join a VAT group there.

In that respect, **a large majority** of the VAT Committee is of the view that the branch of a company with its head office in a third country or another Member State may, independently of its head office, become a member of a VAT group in the Member State in which the branch is established. The VAT Committee also agrees at **large majority** that the head office of a company with its branch in a third country or another Member State may, independently of its branch, become a member of a VAT group in the Member State in which the head office is established.

2. The VAT Committee by **a large majority** confirms that by joining a VAT group pursuant to Article 11 of the VAT Directive, an entity (head office or branch) becomes part of a new taxable person for VAT purposes – namely the VAT group – irrespective of the legal person to which it belongs. **The large majority** of the VAT Committee also confirms that the treatment of a VAT group as a single taxable person precludes the members of the VAT group from continuing to operate, within and outside their group, as individual taxable persons for VAT purposes.

3. The VAT Committee, with **a large majority**, agrees that a supply of goods or services by one entity to another entity of the same legal person such as “head office to branch”, “branch to head office” or “branch to branch”, where only one of the entities involved in the transaction is a member of a VAT group or where the entities are members of separate VAT groups, shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.

In that regard, it is the view of **the large majority** of the VAT Committee that for such a transaction to be taxable, it is irrelevant whether the goods or services are supplied from a third country to a Member State or vice versa, or between two Member States.

4. The VAT Committee by **a large majority** agrees that a supply of goods or services between an entity of a legal person (head office or branch) established in a Member State irrespective of whether that Member State has introduced a VAT grouping scheme, and a VAT group in another Member State which includes another entity of the same legal person (branch or head office) shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.